

REMARKS/ARGUMENTS

Claims 1-54 are in the case.

The Applicants have studied the office action dated July 16, 2007 and believe the application is in condition for allowance. Reconsideration and reexamination are respectfully requested.

The preambles of independent claims 1, 14, 27, 40, 50, and 53 have been amended to clarify recited features. It is respectfully submitted that the scope of the claims has not been narrowed. Although Applicants amended claims, Applicants are not conceding in this application that the amended claims in their pre-amended form are invalid, as the present claim amendments are only for facilitating expeditious prosecution. Applicants respectfully reserve the right to pursue these and other claims in this present application and one or more continuations and/or divisional patent applications.

Applicants gratefully acknowledge the Examiner's indication that dependent claims 3, 11-13, 16, 24-26, 29, 37-39, 42, 47-49, 51-52 and 54 are allowed over prior art. However, it respectfully submitted that the independent claims and any intervening claims are allowable as well as set forth below. As set forth above, Applicants reserve the right to present the allowed claims incorporating the independent claims and any intervening claims in their original, pre-amended form.

In the statement of reasons for allowance the Examiner provided various reasons for allowance. Applicant notes that the claims are directed to various combinations of features. It is respectfully submitted that the patentability of each of the allowed and allowable claims resides in the combination of features recited in that claim in addition to any features noted by the Examiner.

The office action states that the Examiner has rejected the claims as anticipated (§102(e)) by US Pat. No. 6,754,773 to Ulrich. However, in view the Examiner's remarks, it is believed that the Examiner intended to reject the claims as unpatentable over U.S. pat. No. 6,098,074 to Connor et al. in view of U.S. pat. No. 6,453,319 to Mattis et al. This rejection is respectfully traversed.

Claim 1, for example, is directed to a "data backup management method, comprising: receiving multiple user files from at least one client station coupled to a data storage subsystem;

storing at least some of the multiple user files in a retrieval storage pool at a first location in the data storage subsystem; creating a managed file comprising an aggregation of at least some of the multiple user files; applying first predetermined criteria to a user file stored in the retrieval storage pool to designate the user file in the retrieval storage pool as one of a higher priority and a lower priority; and deleting from said retrieval storage pool a user file designated as lower priority.” The Examiner concedes that “Cannon does not teach: applying first predetermined criteria to a user file stored in the retrieval storage pool to designate the user file in the retrieval storage pool as one of a higher priority and a lower priority.” The Examiner further concedes that “Cannon does not teach: deleting from said retrieval storage pool a user file designated as lower priority; and Cannon does not teach: retaining in said retrieval storage pool a user file designated as higher priority.”

It is respectfully submitted that the deficiencies of the Cannon reference are not met by the Examiner’s citations to the Mattis reference. More specifically, it is believed that the Examiner’s citations to the Mattis reference relate to operations of a *cache in a proxy server* (Mattis, col. 6, lines 46-60) rather than backing up multiple user files in retrieval storage pools and managed files as required by claim 1.

It is noted that the Cannon reference describes using a cache (not shown) to expedite access to files including expediting updates to the database 113 (Connor, col. 14, lines 14-27). It is respectfully submitted that if it were obvious to combine Connor and Mattis, a point not conceded by the Applicants, one of ordinary skill would at best seek to apply the *caching techniques* of Mattis to the *cache* of the Cannon reference, not to the storage pools used for data backup including managed file creation. Thus, if one of ordinary skill were motivated to optimize system performance as suggested by the Examiner, it is respectfully submitted that one of ordinary skill would at best seek to optimize the performance of the *cache* of the Cannon reference utilizing the Mattis reference. The Examiner has provided no evidence to support the position that one of ordinary skill would seek to optimize the backup operations of the Cannon reference using the caching techniques of the Mattis reference.

Independent claims 14, 27, 40, 50, and 53 may be distinguished in a similar fashion.

The rejection of the dependent claims is improper for the reasons given above.

Moreover, the dependent claims include additional limitations, which in combination with the

base and intervening claims from which they depend provide still further grounds of patentability over the cited art.

The Examiner has made various comments concerning the anticipation or obviousness of various features of the present inventions. Applicants respectfully disagree. Applicants have addressed those comments directly hereinabove or the Examiner's comments are deemed moot in view of the above response.

Conclusion

For all the above reasons, Applicants submit that the pending claims 1-54 are patentable over the art of record. Applicants have not added any claims. Nonetheless, should any additional fees be required, please charge Deposit Account No. 09-0466.

The attorney of record invites the Examiner to contact him at (310) 553-7970 if the Examiner believes such contact would advance the prosecution of the case.

Dated: October 16, 2007

By: William Konrad

Registration No. 28,868

Please direct all correspondences to:

William K. Konrad
Konrad Raynes & Victor, LLP
315 South Beverly Drive, Ste. 210
Beverly Hills, CA 90212
Tel: (310) 553-7970
Fax: 310-556-7984